

AMENDED IN ASSEMBLY AUGUST 18, 2008

AMENDED IN ASSEMBLY JULY 2, 2008

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL

No. 1739

Introduced by Senator Simitian

February 22, 2008

An act to amend Sections 8670.10, 8670.29, and 8670.30 of the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1739, as amended, Simitian. Oil spill contingency plan.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the discretion of the Governor, to implement activities relating to oil spill response, including drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. The act requires the administrator to periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures.

This bill would specify an alternative procedure if the administrator, the United States Coast Guard, ~~the State Lands Commission, the California Coastal Commission,~~ or any other qualified public agency, as determined by the administrator, is unable to attend a drill of the oil spill contingency plan *held outside the state*. The bill would *authorize the administrator to require the owner or operator of the vessel or marine facility to provide for an independent drill monitor, approved by the administrator* to evaluate the drill, who would be required to

submit the evaluation to the administrator and ~~operator or rated oil spill response organization (OSRO)~~ *the owner or operator*. Based upon this evaluation, the administrator would be required to determine whether the drill satisfies the requirements of the act. *The bill would require the administrator to adopt regulations to implement these provisions on or before January 1, 2010.*

(2) The act requires every owner or operator of specified marine facilities and owners or operators of certain vessels to prepare and implement an oil spill contingency plan containing specified provisions that has been submitted to, and approved by, the administrator. With respect to a marine facility, the act requires the plan to include provisions for training and drills on elements of the plan at least annually and provisions for subjecting all elements of the plan to drills or tests, as specified by the administrator, at least once every 3 years.

This bill would instead require the plan for both those marine facilities and for vessels to include training and drills on all elements of the plan at least annually and subject all elements of the plan to a drill at least once every 3 years.

(3) The act authorizes an oil spill response organization (OSRO) to apply to the administrator for a rating of that OSRO's response capabilities. The administrator is authorized to require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. The act requires each rated OSRO to satisfactorily complete at least one unannounced drill every 3 years after receiving its rating, and allows for specified drill substitutions.

This bill would instead require the administrator to require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. The bill would also require the administrator to require satisfactory completion of one unannounced drill for each rated OSRO prior to being granted a renewal or prior to reinstatement of a revoked or suspended rating. The bill would limit certain drill substitutions to acts within the previous 3 years.

(4) *This bill would incorporate additional changes in Section 8670.30 of the Government Code, proposed by AB 2547, to be operative only if AB 2547 and this bill are both chaptered and become effective on or before January 1, 2009, and this bill is chaptered last.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 8670.10 of the Government Code is amended to read:

8670.10. (a) (1) Except as provided in subdivision (b), in coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(2) The administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to this subdivision. The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist. The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(3) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(4) After every drill attended by the administrator or his or her representative, that person shall issue a report that evaluates the performance of the participants.

(b) (1) If the administrator, the United States Coast Guard, ~~the State Lands Commission, the California Coastal Commission,~~ or any other qualified public agency, as determined by the administrator, is unable to attend a drill of an oil spill contingency plan, ~~the operator or rated OSRO shall plan held outside the state,~~ the administrator may require the owner or operator to provide

1 for an independent drill monitor, under the direction and approval
2 of the administrator, *drill monitor* to evaluate the drill; consistent
3 with the requirements of this chapter. The administrator shall make
4 the decision whether to approve the independent drill monitor prior
5 to conduct of the drill. *adopt regulations to implement this section*
6 *on or before January 1, 2010.*

7 (2) Within 14 days after the date that the drill specified in
8 paragraph (1) is conducted, the independent drill monitor shall
9 submit the evaluation specified in paragraph (1) to the administrator
10 and operator or rated OSRO owner or operator .

11 ~~(3) Based~~

12 (3) *Based* on the evaluation submitted pursuant to paragraph
13 (2) and any other applicable requirements of this chapter, the
14 administrator shall determine whether the drill conducted pursuant
15 to this subdivision satisfies the requirements of this chapter.

16 SEC. 2. Section 8670.29 of the Government Code is amended
17 to read:

18 8670.29. (a) In accordance with the rules, regulations, and
19 policies established by the administrator pursuant to Section
20 8670.28, an owner or operator of a marine facility, small marine
21 fueling facility, or mobile transfer unit, prior to operating in the
22 marine waters of the state or where an oil spill could impact marine
23 waters; and an owner or operator of a tank vessel, nontank vessel,
24 or vessel carrying oil as secondary cargo, before operating in the
25 marine waters of the state, shall prepare and implement an oil spill
26 contingency plan that has been submitted to, and approved by, the
27 administrator pursuant to Section 8670.31. An oil spill contingency
28 plan shall ensure the undertaking of prompt and adequate response
29 and removal action in case of an oil spill, shall be consistent with
30 the California oil spill contingency plan, and shall not conflict with
31 the National Oil and Hazardous Substances Pollution Contingency
32 Plan (NCP).

33 (b) An oil spill contingency plan shall, at a minimum, meet all
34 of the following requirements:

35 (1) Be a written document, reviewed for feasibility and
36 executability, and signed by the owner or operator, or their
37 designee.

38 (2) Provide for the use of an incident command system to be
39 used during a spill.

1 (3) Provide procedures for reporting oil spills to local, state,
2 and federal agencies, and include a list of contacts to call in the
3 event of a drill, threatened spill, or spill.

4 (4) Describe the communication plans to be used during a spill.

5 (5) Describe the strategies for the protection of environmentally
6 sensitive areas.

7 (6) Identify at least one rated OSRO for each rating level
8 established pursuant to Section 8670.30. Each identified rated
9 OSRO shall be directly responsible by contract, agreement, or
10 other approved means to provide oil spill response activities
11 pursuant to the oil spill contingency plan. A rated OSRO may
12 provide oil spill response activities individually, or in combination
13 with another rated OSRO, for a particular owner or operator.

14 (7) Identify a qualified individual.

15 (8) Provide the name, address, and telephone and facsimile
16 numbers for an agent for service of process, located within the
17 state and designated to receive legal documents on behalf of the
18 owner or operator.

19 (9) Provide for training and drills on elements of the plan at
20 least annually, with all elements of the plan subject to a drill at
21 least once every three years.

22 (c) An oil spill contingency plan for a vessel shall also include,
23 but is not limited to, all of the following requirements:

24 (1) The plan shall be submitted to the administrator at least
25 seven days prior to the vessel entering waters of the state.

26 (2) The plan shall provide evidence of compliance with the
27 International Safety Management Code, established by the
28 International Maritime Organization, as applicable.

29 (3) If the oil spill contingency plan is for a tank vessel, the plan
30 shall include both of the following:

31 (A) The plan shall specify oil and petroleum cargo capacity.

32 (B) The plan shall specify the types of oil and petroleum cargo
33 carried.

34 (4) If the oil spill contingency plan is for a nontank vessel, the
35 plan shall include both of the following:

36 (A) The plan shall specify the type and total amount of fuel
37 carried.

38 (B) The plan shall specify the capacity of the largest fuel tank.

39 (d) An oil spill contingency plan for a marine facility shall also
40 include, but is not limited to, all of the following provisions:

1 (1) Provisions for site security and control.

2 (2) Provisions for emergency medical treatment and first aid.

3 (3) Provisions for safety training, as required by state and federal
4 safety laws for all personnel likely to be engaged in oil spill
5 response.

6 (4) Provisions detailing site layout and locations of
7 environmentally sensitive areas requiring special protection.

8 (5) Provisions for vessels that are in the operational control of
9 the facility for loading and unloading.

10 (e) The oil spill contingency plan shall be available to response
11 personnel and to relevant state and federal agencies for inspection
12 and review.

13 (f) The oil spill contingency plan shall be reviewed periodically
14 and updated as necessary. All updates shall be submitted to the
15 administrator pursuant to this article.

16 (g) In addition to the regulations adopted pursuant to Section
17 8670.28, the administrator shall adopt regulations and guidelines
18 to implement this section. The regulations and guidelines shall
19 provide for the best achievable protection of coastal and marine
20 resources. The administrator may establish additional oil spill
21 contingency plan requirements, including, but not limited to,
22 requirements based on the different geographic regions of the state.
23 All regulations and guidelines shall be developed in consultation
24 with the State Interagency Oil Spill Committee and the Oil Spill
25 Technical Advisory Committee.

26 SEC. 3. Section 8670.30 of the Government Code is amended
27 to read:

28 8670.30. (a) An oil spill response organization may apply to
29 the administrator for a rating of that OSRO's response capabilities.
30 The administrator shall establish rating levels for classifying
31 OSROs pursuant to subdivision (b).

32 (b) Upon receiving a completed application for rating, the
33 administrator shall review the application and rate the OSRO based
34 on the OSRO's satisfactory compliance with criteria established
35 by the administrator, which shall include, but is not limited to, all
36 of the following elements:

37 (1) The geographic region or regions of the state where the
38 OSRO intends to operate.

39 (2) Timeframes for having response resources on-scene and
40 deployed.

1 (3) The type of equipment that the OSRO will use and the
2 location of the stored equipment.

3 (4) The volume of oil that the OSRO is capable of recovering
4 and containing.

5 (c) The administrator shall not issue a rating until the applicant
6 OSRO completes an unannounced drill. The administrator may
7 call a drill for every distinct geographic area in which the OSRO
8 requests a rating. The drill shall test the resources and response
9 capabilities of the OSRO, including, but not limited to, on water
10 containment and recovery, environmentally sensitive habitat
11 protection, and storage. If an OSRO fails to successfully complete
12 a drill, the administrator shall not issue the requested rating, but
13 the administrator may rate the OSRO at a rating lesser than the
14 rating sought with the application. If an OSRO is denied a
15 requested rating, the OSRO may reapply for rating.

16 (d) A rating issued pursuant to this section shall be valid for
17 three years unless modified, suspended, or revoked. The
18 administrator shall review the rating of each rated OSRO at least
19 once every three years. The administrator shall not renew a rating
20 unless the OSRO meets criteria established by the administrator,
21 including, at a minimum, that the rated OSRO periodically tests
22 and drills itself, including testing protection of environmentally
23 sensitive sites, during the three-year period.

24 (e) The administrator shall require a rated OSRO to demonstrate
25 that the rated OSRO can deploy the response resources required
26 to meet the applicable provisions of an oil spill contingency plan
27 in which the OSRO is listed. These demonstrations may be
28 achieved through inspections, announced and unannounced drills,
29 or by any other means.

30 (f) (1) Except as provided in paragraph (6), each rated OSRO
31 shall satisfactorily complete at least one unannounced drill every
32 three years after receiving its rating.

33 (2) The administrator may modify, suspend, or revoke an
34 OSRO's rating if a rated OSRO fails to satisfactorily complete a
35 drill.

36 (3) The administrator may require the satisfactory completion
37 of one unannounced drill of each rated OSRO prior to being
38 granted a modified rating, and shall require satisfactory completion
39 of one unannounced drill for each rated OSRO prior to being

1 granted a renewal or prior to reinstatement of a revoked or
2 suspended rating.

3 (4) A drill for the protection of environmentally sensitive areas
4 shall conform as close as possible to the response that would occur
5 during a spill but sensitive sites shall not be damaged during the
6 drill.

7 (5) The response resources to be deployed by a rated OSRO
8 within the first six hours of a spill or drill shall be dedicated
9 response resources or be owned and controlled by a rated OSRO
10 that are sufficient to meet the spill response planning requirements
11 of the OSRO's client owner or operator. This requirement does
12 not preclude a rated OSRO from bringing in additional response
13 resources. The administrator may, by regulation, permit a lesser
14 requirement for dedicated or OSRO owned and controlled response
15 resources for shoreline protection.

16 (6) The administrator may determine that actual satisfactory
17 spill response performance during the previous three years may
18 be substituted in lieu of a drill.

19 (7) The administrator shall issue a written report evaluating the
20 performance of the OSRO after every unannounced drill called by
21 the administrator.

22 (8) The administrator shall determine whether an unannounced
23 drill called upon an OSRO by a federal agency during the previous
24 three years qualifies as an unannounced drill for the purposes of
25 this subdivision.

26 (g) Each rated OSRO shall provide reasonable notice to the
27 administrator about each future drill, and the administrator, or his
28 or her designee, may attend the drill.

29 (h) The costs incurred by an OSRO to comply with this section
30 and the regulations adopted pursuant to this section, including
31 drills called by the administrator, shall be the responsibility of the
32 OSRO. All local, state, and federal agency costs incurred in
33 conjunction with participation in a drill shall be borne by each
34 respective agency.

35 (i) (1) A rating awarded pursuant to this section is personal and
36 applies only to the OSRO that receives that rating and the rating
37 is not transferable, assignable, or assumable. A rating does not
38 constitute a possessory interest in real or personal property.

1 (2) If there is a change in ownership or control of the OSRO,
2 the rating of that OSRO is null and void and the OSRO shall file
3 a new application for a rating pursuant to this section.

4 (3) For purposes of this subdivision, a “change in ownership or
5 control” includes, but is not limited to, a change in corporate status,
6 or a transfer of ownership that changes the majority control of
7 voting within the entity.

8 (j) The administrator may charge a reasonable fee to process an
9 application for, or renewal of, a rating.

10 (k) The administrator shall adopt regulations to implement this
11 section as appropriate. At a minimum, the regulations shall
12 appropriately address all of the following:

13 (1) Criteria for successful completion of a drill.

14 (2) The amount and type of response resources that are required
15 to be available to respond to a particular volume of spilled oil
16 during specific timeframes within a particular region.

17 (3) Regional requirements.

18 (4) Training.

19 (5) The process for applying for a rating, and for suspension,
20 revocation, appeal, or other modification of a rating.

21 (6) Ownership and employment of response resources.

22 (7) Conditions for canceling a drill due to hazardous or other
23 operational circumstances.

24 (l) Any letter of approval issued from the administrator before
25 January 1, 2002, that rates an OSRO shall be deemed to meet the
26 requirements of this section for three years from the date of the
27 letter’s issuance or until January 1, 2003, whichever date occurs
28 later.

29 *SEC. 3.5. Section 8670.30 of the Government Code is amended*
30 *to read:*

31 8670.30. (a) An oil spill response organization may apply to
32 the administrator for a rating of that OSRO’s response capabilities.
33 The administrator shall establish rating levels for classifying
34 OSROs pursuant to subdivision (b).

35 (b) Upon receiving a completed application for rating, the
36 administrator shall review the application and rate the OSRO based
37 on the OSRO’s satisfactory compliance with criteria established
38 by the administrator, which shall include, but is not limited to, all
39 of the following elements:

1 (1) The geographic region or regions of the state where the
2 OSRO intends to operate.

3 (2) Timeframes for having response resources on-scene and
4 deployed.

5 (3) The type of equipment that the OSRO will use and the
6 location of the stored equipment.

7 (4) The volume of oil that the OSRO is capable of recovering
8 and containing.

9 (5) *The dedicated response resources the OSRO controls in the*
10 *area it intends to operate. For the purposes of this paragraph,*
11 *“controls” means equipment owned by the OSRO and located in*
12 *the area and personnel employed by the OSRO and located in the*
13 *area.*

14 (6) *The capability of the OSRO to provide best achievable*
15 *protection.*

16 (c) The administrator shall not issue a rating until the applicant
17 OSRO completes an unannounced drill. The administrator may
18 call a drill for every distinct geographic area in which the OSRO
19 requests a rating. The drill shall test the resources and response
20 capabilities of the OSRO, including, but not limited to, on water
21 containment and recovery, environmentally sensitive habitat
22 protection, and storage. If an OSRO fails to successfully complete
23 a drill, the administrator shall not issue the requested rating, but
24 the administrator may rate the OSRO at a rating lesser than the
25 rating sought with the application. If an OSRO is denied a
26 requested rating, the OSRO may reapply for rating.

27 (d) A rating issued pursuant to this section shall be valid for
28 three years unless modified, suspended, or revoked. The
29 administrator shall review the rating of each rated OSRO at least
30 once every three years. The administrator shall not renew a rating
31 unless the OSRO meets criteria established by the administrator,
32 including, at a minimum, that the rated OSRO periodically tests
33 and drills itself, including testing protection of environmentally
34 sensitive sites, during the three-year period.

35 (e) The administrator ~~may~~ *shall* require a rated OSRO to
36 demonstrate that the rated OSRO can deploy the response resources
37 required to meet the applicable provisions of an oil spill
38 contingency plan in which the OSRO is listed. These
39 demonstrations may be achieved through inspections, announced
40 and unannounced drills, or by any other means.

(f) (1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator ~~may~~ *shall* require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, ~~or and shall require satisfactory completion of one unannounced drill for renewal,~~ *each rated OSRO prior to being granted a renewal* or prior to *the* reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources ~~or be owned and controlled by a rated OSRO that are sufficient to meet the spill response planning requirements of the OSRO's client owner or operator.~~ This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual *satisfactory* spill response performance *during the previous three years* may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency *during the previous three years* qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including

1 drills called by the administrator, shall be the responsibility of the
2 OSRO. All local, state, and federal agency costs incurred in
3 conjunction with participation in a drill shall be borne by each
4 respective agency.

5 (i) (1) A rating awarded pursuant to this section is personal and
6 applies only to the OSRO that receives that rating and the rating
7 is not transferable, assignable, or assumable. A rating does not
8 constitute a possessory interest in real or personal property.

9 (2) If there is a change in ownership or control of the OSRO,
10 the rating of that OSRO is null and void and the OSRO shall file
11 a new application for a rating pursuant to this section.

12 (3) For purposes of this subdivision, a “change in ownership or
13 control” includes, but is not limited to, a change in corporate status,
14 or a transfer of ownership that changes the majority control of
15 voting within the entity.

16 (j) The administrator may charge a reasonable fee to process an
17 application for, or renewal of, a rating.

18 (k) The administrator shall adopt regulations to implement this
19 section as appropriate. At a minimum, the regulations shall
20 appropriately address all of the following:

21 (1) *The level of resources that constitute best achievable*
22 *protection.*

23 ~~(1)~~

24 (2) Criteria for successful completion of a drill.

25 ~~(2)~~

26 (3) The amount and type of response resources that are required
27 to be available to respond to a particular volume of spilled oil
28 during specific timeframes within a particular region.

29 ~~(3)~~

30 (4) Regional requirements.

31 ~~(4)~~

32 (5) Training.

33 ~~(5)~~

34 (6) The process for applying for a rating, and for suspension,
35 revocation, appeal, or other modification of a rating.

36 ~~(6)~~

37 (7) Ownership and employment of response resources.

38 ~~(7)~~

39 (8) Conditions for canceling a drill due to hazardous or other
40 operational circumstances.

1 (l) ~~Any~~ A letter of approval issued from the administrator before
2 January 1, 2002, that rates an OSRO shall be deemed to meet the
3 requirements of this section for three years from the date of the
4 letter's issuance or until January 1, 2003, whichever date occurs
5 later.

6 *SEC. 4. Section 3.5 of this bill incorporates amendments to*
7 *Section 8670.30 of the Government Code proposed by both this*
8 *bill and AB 2547. It shall only become operative if (1) both bills*
9 *are enacted and become effective on or before January 1, 2009,*
10 *(2) each bill amends Section 8670.30 of the Government Code,*
11 *and (3) this bill is enacted after AB 2547, in which case Section 3*
12 *of this bill shall not become operative.*